



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JAN 30 2001

Mr. Jack Wilson, Director
Division of Water
Kentucky Natural Resources & Environmental
Protection Cabinet
Department of Environmental Protection
Frankfort Office Plaza
14 Reilly Road
Frankfort, Kentucky 40601

SUBJ: EPA's Approval of Revisions to Kentucky's Water Quality Standards and Endangered Species Act Section 7(a) consultation with the U.S. Fish and Wildlife Service

Dear Mr. Wilson:

The U.S. Environmental Protection Agency (EPA), Region 4, has conditionally approved the revisions to Kentucky's Water Quality Standards, 401 KAR Chapters 5:002, 5:026, 5:29, 5:030, and 5:031. In accordance with the requirements of Section 7 of the Endangered Species Act, EPA prepared a draft biological evaluation (BE), encompassing all the elements needed to comply with implementation regulations 50 CFR 402.14 (c). EPA has made a "Not Likely To Adversely Affect" determination for listed species or critical habitat in the areas of concern for our approval of the Water Quality Standards revisions.

In discussions with the U.S. Fish and Wildlife Service (FWS) concerning the biological evaluation and the Federal action (our approval of the revisions), the FWS provided several significant comments to the draft BE and to the Water Quality Standards for Kentucky. Some of the comments are unrelated to the Federal action, and EPA believes that the following concerns would best be addressed by the Commonwealth. For a few of the recommendations, EPA believes that they may be addressed during the next triennial review, while others may be addressed through general correspondence with the FWS.

1. The FWS recommends that the Wolf Island reach of the Mississippi River (RM 930.0 to 935.0) be added to the list of waters proposed for redesignation to Outstanding State Resource Water (OSRW). The FWS states that this area supports a large nesting colony of the federally endangered least tern (*Sterna antillarum*), and may also support the endangered winged mapleleaf (*Quadrula fragosa*). EPA supports this recommendation and believes that it should be addressed during the next triennial review. EPA notes that if the Commonwealth is made aware of the presence of federally listed species, it is obligated to redesignate the reach.

2. The following four streams were redesignated from OSRW to Warmwater Aquatic Habitat (WAH): Becks Creek (Whitley County), Little Clear Creek (Bell County), Yellow Creek (Bell County), and Straight Creek (Harlan County). Further, the FWS states that it does not have any record of coordination with the Commonwealth of Kentucky concerning these streams and their redesignation. Each of these streams supported populations of the federally threatened blackside dace (*Phoxinus cumberlandensis*) through the 1980s, but the populations have been extirpated since then. The FWS recommended that the cause(s) of impairment to these three reaches be identified, and those streams placed on the Clean Water Act (CWA) Section 303(d) list of impaired waters in Kentucky, as appropriate. Further, FWS recommends that if it is determined that a pollutant regulated by the CWA is identified as a causative factor for the extirpation, then total maximum daily load(s) (TMDL) be developed for these streams, as appropriate.

The Commonwealth should evaluate these streams to determine the cause of extirpation. If the extirpation is due to a pollutant regulated by the CWA, EPA supports the listing of these four streams on the 303(d) list, and wishes to conduct further discussion with the State on this issue. Also, EPA recommends that the Commonwealth contact the FWS Cookeville office to discuss the redesignation of these streams.

3. The FWS recommended the development of specific language in the Commonwealth of Kentucky's water quality standards which prohibits the designation of mixing zones and ZIDs in waters which support mussels, including Federally listed species, and requires a potential applicant to conduct a thorough biological survey of a stream reach for the presence of mussel beds and other sensitive aquatic species. Further, the FWS recommended that the water quality standards include a designated buffer between the spatial boundaries of a mixing zone and/or ZID and known mussel beds.

EPA supports these recommendations, and believes that it should be addressed in the next triennial review. Also, KDOW staff have informed us, through personal communication, that the Commonwealth interprets the language of 401 KAR Chapter 5:029 Section 4(5) as prohibiting the siting of a mixing zone in an area where mussel beds are present. Please provide your interpretation of this issue in writing to us.

4. The FWS has requested a discussion of the current procedures or publications utilized by the Commonwealth of Kentucky regarding water quality criteria implementation (i.e. Kentucky Pollutant Discharge Elimination System (KPDES) permit, mixing zone, and ZID guidance), and the protection of Federally listed threatened and endangered species. Further, the FWS has requested information on the following:

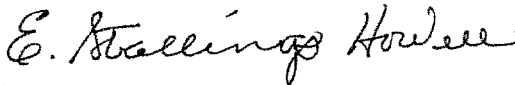
- (a) the identification of all designated mixing zones and ZIDs in waters of the Commonwealth;
- (b) the utilization of acute and chronic criteria in developing instantaneous and average limits for individual KPDES permits;
- (c) the issuance of KPDES permits in waters which support Federally listed species; and

(d) periodic review procedures utilized by the Kentucky Division of Water (KDOW), including standards chronic and acute toxicity testing of effluents and whole effluent and in-stream toxicity tests.

While EPA believes that we may be able to provide a portion of the FWS requested information, we recognize that much of the requested information may not be readily available. Our staff would be interested in discussing the request for information, and perhaps the collection method for such information, which may be helpful during the next triennial review. Particularly, EPA believes that we may be able to provide copies of the procedures and publications utilized by the Commonwealth, including guidance used for permit-writing and issuance, and acute and chronic toxicity testing procedures. If we are unable, we assume that such information is readily available from KDOW. Other information requests, such as identification of all mixing zones and ZIDs in the Commonwealth, and issuance of NPDES permits in waters supporting listed species, may require some research into the matter. We wish to discuss the potential for the Commonwealth to produce such information and our staff will contact KDOW in the near future to discuss these informational requests.

We would appreciate a timely response concerning the issues listed above. The willingness of the Commonwealth to consider such issues, particularly during the next triennial review, would also be appreciated. We note that the triennial review process will involve interested resource agencies such as the FWS, and EPA believes that it is imperative to seriously consider their concerns early in the process. If you have any questions or comments concerning these issues, please feel free to contact my staff including Kathy Matthews at (404) 562-9373, Duncan Powell at (404) 562-9258, or Eve Zimmerman at (404) 562-9259.

Sincerely,


for Beverly H. Banister, Director
Water Management Division

cc: USFWS, Cookeville
USFWS, Atlanta